

The City Council of the City of Fayetteville, Arkansas referred this ordinance to the Fayetteville voters for their enactment or rejection in a Special Election to be held on September 8, 2015. The ordinance must be approved by a majority of the Fayetteville citizens at this Special Election before it can be entered into the Fayetteville Code.

**ORDINANCE NO. 5781**

**AN ORDINANCE TO ENSURE UNIFORM NONDISCRIMINATION PROTECTIONS WITHIN THE CITY OF FAYETTEVILLE FOR GROUPS ALREADY PROTECTED TO VARYING DEGREES THROUGHOUT STATE LAW**

**WHEREAS**, laws including the Civil Rights Act (42 U.S.C § 2000e, et seq.), the Arkansas Civil Rights Act of 1993 (A.C.A. § 16-123-101 et seq.) and the Arkansas Fair Housing Act (A.C.A. § 16-123-201 et seq.) provide Fayetteville citizens with protections against discrimination on the basis of race, ethnicity, national origin, age, sex, religion and disability; and

**WHEREAS**, the General Assembly has determined that attributes such as “gender identity” and “sexual orientation” require protection {A.C.A. § 6-18-514 (b)(1)}; and

**WHEREAS**, Fayetteville citizens deserve fair, equal and dignified treatment under the law; and

**WHEREAS**, Fayetteville seeks to attract a diverse and creative workforce by promoting itself to prospective businesses and employees as a fair, tolerant and welcoming community; and

**WHEREAS**, the protected classifications in A.C.A. § 6-18-514 (b)(1) for persons on the basis of gender identity and sexual orientation should also be protected by the City of Fayetteville to prohibit those isolated but improper circumstances when some person or business might intentionally discriminate against our gay, lesbian, bisexual and transgender citizens; and

**WHEREAS**, in response to the concerns recently expressed by the citizens of Fayetteville on a similar issue, the Fayetteville City Council recognizes their interest in participating in the democratic process and invites the citizens to decide whether gender identity and sexual orientation should also be protected by the City of Fayetteville.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby refers this ordinance to the Fayetteville voters for their enactment or rejection in a Special Election to be held on September 8, 2015. The operative provisions that will be enacted by Fayetteville citizens into the Fayetteville Code if approved by a majority of Fayetteville citizens voting in the election shall be as follows:

## **“Uniform Civil Rights Protection**

### **Purpose**

Fayetteville is a welcoming, fair and tolerant city which endeavors to ensure that all of its citizens and visitors will be free from unfair discrimination. Since Federal and State law already protect citizens from most discrimination, the **Uniform Civil Rights Protection** Article shall extend existing protections to lesbian, gay, bisexual, and transgender citizens and visitors as recognized elsewhere in state law.

### **Definitions**

- (A) *“Employee”*. This definition adopts and incorporates herein the definition of “Employee” as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (4).
- (B) *“Employer”*. This definition adopts and incorporates herein the definition of “Employer” as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (5).
- (C) *“Gender Identity”* means an individual's own, bona fide sense of being male or female, and the related external characteristics and behaviors that are socially defined as either masculine or feminine. Gender identity may or may not correspond to the sex assigned to the individual at birth.
- (D) *“Housing accommodation”*. This definition adopts and incorporates herein the definition of “Housing accommodation” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (1).
- (E) *“Place of public resort, accommodation, assemblage or amusement”*. This definition adopts and incorporates herein the definition of “Place of public resort, accommodation, assemblage or amusement” as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (7). Furthermore, this shall not mean any religious facility or other religious institution including their owned and operated schools and daycare facilities.
- (F) *“Real estate broker or salesman”*. This definition adopts and incorporates herein the definition of “Real estate broker or salesman” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (2).

(G) “*Real estate transaction*”. This definition adopts and incorporates herein the definition of “Real estate transaction” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (3).

(H) “*Real property*”. This definition adopts and incorporates herein the definition of “Real property” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (4).

(I) “*Sexual Orientation*” means heterosexuality, homosexuality or bisexuality by practice, identity or expression.

### **Applicability and Exemptions**

(A) The **Uniform Civil Rights Protection Article** is only applicable to discriminatory actions occurring within the Fayetteville city limits.

(B) This Article adopts and incorporates herein the entirety of A.C.A. § 16-123-103 **Applicability** of the Arkansas Civil Rights Act.

(C) Churches, religious schools and daycare facilities, and religious organizations of any kind shall be exempt from this Article.

### **Discrimination Offense**

(A) The right of an otherwise qualified person to be free from discrimination because of sexual orientation and gender identity is the same right of every citizen to be free from discrimination because of race, religion, national origin, gender and disability as recognized and protected by the Arkansas Civil Rights Act of 1993.

(B) The **Uniform Civil Rights Protection Article** adopts and incorporates herein these rights as quoted below:

(1) The right to obtain and hold employment without discrimination;

(2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(3) The right to engage in property transactions (including sales and leases) without discrimination;

(4) The right to engage in credit and other contractual transactions without discrimination;  
and

(5) The right to vote and participate fully in the political process.

(C) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of sexual orientation or gender identity engage in any conduct likewise prohibited by A.C.A. § 16-123-204 **Prohibited Acts** of the Arkansas Fair Housing Act on the basis of other enumerated attributes.

(D) No employer shall discriminate against nor threaten any individual because such individual in good faith has opposed any act or practice made unlawful by this section or because such person in good faith made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing related to the **Uniform Civil Rights Protection** Article.

### **Establishment and Duties of a Civil Rights Commission**

There is hereby established the Civil Rights Commission. The Civil Rights Commission shall review and decide complaints of alleged discrimination in violation of the **Uniform Civil Rights Protection** Article. The Commission will provide to the City Council an annual accounting of the number of complaints received and the outcomes.

### **Composition**

(A) The Civil Rights Commission shall consist of seven members composed of the following:

- (1) Two (2) representatives of the business community;
- (2) Two (2) owners or managers of rental property;
- (3) One (1) representative with experience in Human Resources or employment law;
- (4) Two (2) citizens at large, at least one of whom identifies as gay, lesbian, bisexual, or transgender.

(B) Members will be appointed by the City Council, each for a term of three years. Appointments shall be staggered so that each year either two or three members' terms shall be available for appointment by the Nominating Committee.

(C) Members of the Civil Rights Commission may be removed from office by the City Council for cause upon written charges and after a public hearing.

### **Meetings**

(A) The Civil Rights Commission shall meet for an organizational meeting within 60 days after the citizens enact this ordinance and every year thereafter following the appointment of new members.

(B) Meetings shall be held at the call of the chairperson.

- (C) A majority of the membership of the Civil Rights Commission shall constitute a quorum.
- (D) All meetings shall be open to the public.
- (E) The Civil Rights Commission shall adopt rules necessary to the conduct for its affairs, and in keeping with the provisions of the City's **Uniform Civil Rights Protection** Article.

### **Staff Support**

The City Attorney's office shall receive complaints on behalf of the Civil Rights Commission and assist the Commission in performing its duties and carrying out its responsibilities.

### **Complaint Procedure and Enforcement**

- (A) A person asserting a claim of discrimination, herein referred to as the "Complainant", pursuant to this **Uniform Civil Rights Protection** Article must present such claim in writing to the City Attorney's office no more than ninety (90) days after the person has knowledge of the facts giving rise to the claim of discrimination. The City Attorney's office will, within two (2) business days, notify the Civil Rights Commission that a complaint was received.
- (B) Informal mediation or conciliation between the alleged discriminator, herein referred to as the "Respondent", and Complainant shall be attempted by the City within four business days and before any other enforcement measures can begin. Such mediation or conciliation measures shall be pursued in accordance with the confidentiality protections provided by A.C.A. § 16-7-206. Mediation and conciliation should be concluded within two weeks after the complaint is received unless both parties agree to further efforts.
- (C) If conciliation efforts are successful in resolving the complaint, the Civil Rights Commission will be notified of resolution and take no further action.
- (D) If conciliation efforts fail to resolve the complaint, the Civil Rights Commission shall notify both parties that a hearing will be conducted at a specified place and time not more than fourteen (14) business days after the conclusion of conciliation efforts but not less than five (5) business days after issuance of notice of the hearing.
- (E) Conduct of the Hearing:
  - (1) The Civil Rights Commission shall review the initial complaint and may receive any additional evidence from the Complainant.

(2) The Respondent shall have an opportunity to explain or provide evidence to rebut any allegations of illegal discriminatory acts. No person shall be compelled to be a witness against himself in any formal or informal hearing.

(3) After considering all the evidence presented, if the Civil Rights Commission determines that the Respondent has violated this Article, the Commission shall forward the original claim and their findings to the City Prosecutor.

(F) Penalty:

(1) A person's first violation of this ordinance shall carry a penalty of up to a \$100.00 fine. Fayetteville City Code § 10.99 **General Penalty** shall apply to any subsequent violations.

(2) No violation of this Article shall be construed to be a misdemeanor or felony.

#### Severability

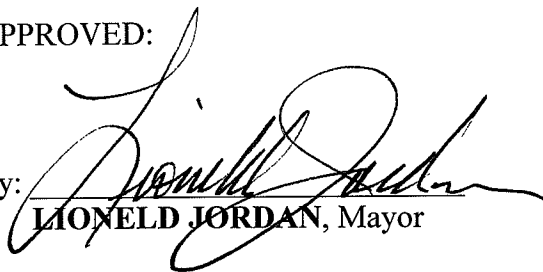
If any part, provision or section of this ordinance is held invalid or unconstitutional it shall be severed from the remainder which shall remain valid and enforceable."

Section 2. That the City Council for the City of Fayetteville, Arkansas hereby determines that if the Fayetteville voters fail to approve the referred ordinance, the ordinance will not go into effect; but if the voters approve the ordinance, the ordinance quoted in Section 1 will be enacted into the Fayetteville Code and become effective sixty (60) days after the approving election.

**PASSED and APPROVED** this 16<sup>th</sup> day of June, 2015.

APPROVED:

ATTEST:

By:   
LIONEL D. JORDAN, Mayor

By:   
SONDRA E. SMITH, City Clerk Treasurer

